

REMARKS

[0001] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-5 are presently pending. Claims withdrawn or cancelled herein are 6-17. Claims 18-22 are added as new.

Formal Request for an Interview

[0002] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0003] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

Substantive Matters

Claim Rejections under § 103

[0004] The Examiner rejects claims 1-5 under § 103. For the reasons set forth below, the Examiner has not made a *prima facie* case showing that the rejected claims are obvious.

[0005] Accordingly, Applicant respectfully requests that the § 103 rejections be withdrawn and the case be passed along to issuance.

[0006] The Examiner's rejections are based upon the following references in combination:

- **Aucsmith et al 5,940,513**: "*Aucsmith et al*" hereinafter US Patent No. 5,940,513 (issued August 17, 1999); and
- **Brunk et al 2007/0101147 A1**: "*Brunk et al*" hereinafter US Patent Publication No. 2007/0101147 A1 (Published May 3, 2007).

Obviousness Rejections

Lack of *Prima Facie* Case of Obviousness (MPEP § 2142)

[0007] Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a *prima facie* case have not been met. To establish *prima facie* obviousness of a claimed invention, all of the claim recitations must be taught or suggested by the prior art¹ and "all words in a claim must be considered in judging the patentability of that claim against the prior art."² Further, if prior art, in any material respect teaches away from the claimed invention, the art cannot be used to support an obviousness rejection.³ Moreover, if a modification would render a reference unsatisfactory for its intended purpose, the suggested modification / combination is impermissible.⁴

Based upon Aucsmith et al and Brunk et al

[0008] The Examiner rejects claims 1-5 under 35 U.S.C. § 103(a) as being unpatentable over Aucsmith et al and Brunk et al. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

¹ *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)

² *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)

³ *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed Cir. 1997)

⁴ See MPEP § 2143.01

Independent Claim 1

[0009] Applicant submits that the combination of *Aucsmith et al* and *Brunk et al* does not teach or suggest all of the elements as recited in this claim. In at least a first difference, claim 1 recites “calculating, on each task change of the CPU, a signature of at least part of the program instruction lines.” That is, each time a program transitions to become a foreground application in which the CPU is executing instructions from said application, at least part of the application is used to generate a signature. See paragraph [8] of the specification.

[0010] Quite differently, *Aucsmith et al* discloses a signature generator 221 (within encoding unit 210) that creates a signature of a program during the encoding (not executing) of the program (FIG. 2; col. 4, line 62 – col. 5, line 9). In fact, *Aucsmith et al* emphasizes the fact (*i.e.*, teaches away) that the signature of the program is created “prior to execution” of the program (col. 5, line 9). Then an access controller unit 106 receives and verifies the signature of the program to be executed in order to identify the origin of the process and verify that the process is not threatening (col. 4, lines 47-61). There is simply no teaching or suggestion that this signature may be generated each time the CPU changes tasks and brings an application back to the foreground as recited in claim 1.

[0011] *Brunk et al* does not teach or suggest this recitation either. There is no disclosure that even shows any cognizance of the concept of a CPU changing tasks such that applications may be transitioned from foreground to background and vice versa. Simply put, no prior art of record teaches or even suggests

“calculating, on each task change of the CPU, a signature of at least part of the program instruction lines” as recited in claim 1.

[0012] In at least a second difference, claim 1 recites “checking the conformity of this signature with a signature recorded upon previous execution of the involved program.” The Examiner correctly acknowledges that *Aucsmith et al* does not teach this recitation. *Brunk et al*, however, does not remedy this deficient teaching. In the cited and applied section of *Brunk et al*, the use of a content signature is disclosed such that the underlying content of a content item may be verified. However, this disclosure merely teaches that the content itself may be checked against a previous version of content. There is no relation to the execution of an involved program. That is, content, in and of itself, is incapable of being executed. Thus, *Brunk et al* simply does not teach or even suggest “checking the conformity of this signature with a signature recorded upon previous execution of the involved program,” as *Brunk et al* does not show an awareness of the ability to execute that which is being checked for conformity. Again, no prior art of record teaches or even suggests this recitation as recited in claim 1.

[0013] Additionally, The Examiner indicates that one would have been motivated to combine the teachings of *Aucsmith et al* and *Brunk et al* because such a combination would enhance security. This conclusion is overly broad and conclusive as just about every improvement in computer technology directed to preventing Trojan horse and other malicious activity is aimed at “enhancing security.” Such broad, conclusory statements do not come close to adequately

addressing the issue of motivation to combine, are not evidence of obviousness, and therefore are improper as a matter of law.¹

[0014] As shown above, *Aucsmith et al* and *Brunk et al*, whether considered individually or in any permissible combination with each other or any other prior art of record, teaches or even suggests all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 2-3

[0015] These claims ultimately depend upon independent claim 1. As discussed above, claim 1 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 4

[0016] Applicant submits that the combination of *Aucsmith et al* and *Brunk et al* does not teach or suggest all of the elements as recited in this claim. Claim 4 recites a processor of multitask execution of several programs, exploiting a table of correspondence, each correspondence being associated with an identifier of the involved program, comprising means for calculating a current

¹ *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

signature, and means for comparing this signature with the identifier of the program stored in the correspondence table.

[0017] Claim 4 is patentable for at least the same reasons as recited above in support of the patentability of claim 1. As shown above, *Aucsmith et al* and *Brunk et al*, whether considered individually or in any permissible combination with each other or any other prior art of record, teaches or even suggests all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

[0018]

Dependent Claim 5

[0019] This claim ultimately depends upon independent claim 4. As discussed above, claim 4 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, this claim may also be allowable for additional independent reasons.

Conclusion

[0020] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me at your convenience.

[0021] Any additional fees required as a result of this amendment have been paid from the below-referenced deposit account as filed herewith. Should further payment be required to cover such fees you are hereby authorized to charge such payment to Deposit Account No. 07-1897.

Respectfully Submitted,

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